

**16 C.F.R. Part 310: Telemarketing Sales Rule  
Notice of Proposed Rulemaking to Amend the Rule  
To Address the Sale of Debt Relief Services,  
and Announcement of Public Forum  
Summary of Communications Pursuant to Commission Rule 1.26(b)(5)**

Donald S. Clark  
Secretary  
June 24, 2010

## MEMORANDUM

To: Don Clark  
From: Allison Brown, Attorney, Division of Financial Practices  
Re: Telemarketing Sales Rule – Debt Relief Amendments, Comments to Be Placed on the Public Record  
Date: June 24, 2010

On Friday, June 18, 2010, representatives of the Attorney General offices of Illinois, North Carolina, and Texas participated in a telephone conference with FTC Commissioner Brill, her attorney advisor, and FTC staff members to discuss the proposed debt relief amendments to the Telemarketing Sales Rule.<sup>1</sup>

The representatives said that an advance fee ban is the most important provision in the FTC's proposed rule and is necessary to stop abusive practices of debt relief companies. The North Carolina representative said that North Carolina has imposed an advance fee ban on debt settlement companies, and it is working well in the state. An Illinois representative said that Illinois has prohibited advance fees for mortgage relief services, which raise similar concerns as debt relief services, and the prohibition has been successful in curbing abuses in that context. An Illinois representative also said that in statistical review they have done in connection with debt settlement cases, they have found that debt settlement companies have helped less than 10% of consumers resolve any debts at all, and no consumers had had all of their debts resolved through a debt settlement program.

A Texas representative said that the NAAG comment was approved at the highest level in their office, and they support of all the statements made in the comment. The Texas representative said that the office currently is litigating six cases against debt settlement companies. She said that, based on the law enforcement experience of the office, only a very small percentage of consumers are getting any settlements from debt settlement companies.

The North Carolina representative stated that he knows of two debt settlement companies that are doing business in North Carolina that comply with the North Carolina law and are not collecting advance fees.

Commissioner Brill stated that certain comments on the proposed rule discussed use of an escrow or dedicated bank account in connection with debt settlement programs. She asked whether the participants thought that the FTC could craft safeguards for such accounts in a rule, if it allowed providers to require consumers to place money for fees in the accounts. The Illinois

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<sup>1</sup>Participating from the office of the Illinois Attorney General were: Deborah Hagan, Elizabeth Blackston, and Rebecca Pruitt. Participating from the office of the North Carolina Attorney General was: Philip Lehman. Participating from the office of the Texas Attorney General were: Esther Chavez and Paul Singer.

Participating from the FTC were: Commissioner Brill, Richard McKewen, Lisa Harrison, Allison Brown, and Robert Swan.

representatives expressed concern that consumers in financial crisis would be injured by a company requiring that they put money into a separate account for fees that the consumers then could not use for living expenses. They also said that financially strapped consumers are not able to save sufficient funds to pay off their debts and to pay the settlement provider's fees. As a result, debt settlement has harmful collateral effects (such as unpaid other bills, accruing fees, collection efforts).

An Illinois representative also stated that the AG's office has received many complaints that consumers believe that the debt settlement company is going to pay creditors right away, but it does not. The AG's office also has received consumer complaints that consumers authorize debt settlement companies to debit money from their bank accounts to be put in special purpose bank accounts, but money has been debited in amounts greater than the amount authorized. An Illinois representative also stated that it can be difficult to ensure that a third party is legitimate and refraining from collusion with the service provider. For example, in the phone bill cramming context, the office has seen evidence that certain third party verification services have colluded with the sellers to obtain false consumer authorizations for certain products and services.

A Texas representative stated that such a provision would help consumers who otherwise might have a difficult time obtaining refunds directly from a debt settlement provider. He stated, however, that it would not alleviate other consumer complaints, such as complaints that creditors file collection lawsuits or increase collection efforts after consumers join debt settlement programs. A Texas representative also expressed concern that if the debt settlement company held the accounts, the money could be subject to claims of the company's creditors, particularly if the company filed for bankruptcy.

The North Carolina representative stated that if a consumer has full control over and access to the account, and the company could not debit money from the account until a consumer had agreed to the settlement, a provision for an account that held consumer savings and money for the provider's fees would make sense. He recommended that the rule should ensure that debt settlement companies did not split fees with the account providers or charge unreasonable fees for the accounts.

An Illinois representative stated that a rule that allowed providers to require consumers to set aside money for their fees in separate accounts, but included specific protections for consumers, would be more difficult to enforce than an advance fee ban without such provisions. She also said that even if a federal rule or state law prohibited providers from requiring consumers to keep money in an escrow or other bank account for their fees, consumers would have the incentive to pay the provider if individual debts were settled because the consumers would want the provider to continue settling his or her other debts. She stated that it might be difficult for the provider to collect the fee for the last debt settled for the consumer.

A Texas representative stated that debt settlement providers have low barriers to entry, and it does not cost very much for them to set up consumers on a debt settlement program and maintain their accounts. Most of the costs that debt settlement providers incur are for

advertising and marketing.

The state attorney general representatives said that debt settlement was not different from credit repair and certain advance fee loans, and the Telemarketing Sales Rule does not provide that such companies can put consumer fees in an escrow or other bank account before the services are performed.

The North Carolina representative said that the rule could be silent on the bank account issue, and that an account to be used for savings and fees would be workable, in his view.